

No. 15232

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**United States  
Court of Appeals**  
for the Ninth Circuit

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ANCHORAGE INDEPENDENT SCHOOL DISTRICT,

Appellant,

vs.

CHUGACH ELECTRIC ASSOCIATION, INC.,

Appellee.

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**Transcript of Record**

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**Appeal from the District Court  
for the District of Alaska,  
Third Division**

**FILED**

**NOV 14 1956**



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## ATTORNEYS OF RECORD

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Anchorage, Alaska,

Attorney for Appellant, Anchorage Independent School District.

EDGAR PAUL BOYKO,  
Turnagain Arms, 523 3rd Ave.,  
Anchorage, Alaska,

Attorney for Appellee.





In the District Court for the District of Alaska.

Third Division

No. A-11097

In the Matter of:

The Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of Said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955, Said Roll Being Known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955.

### PETITION

Comes now the Anchorage Independent School District, a public and municipal corporation, existing under and by virtue of the laws of the Territory of Alaska, and by this petition respectfully reports to the court as follows:

#### I.

That your petition is a public and municipal corporation existing under and by virtue of the laws of the United States of America and the Territory of Alaska.

#### II.

That K. M. Lesh, who certified said roll, is the duly qualified and acting treasurer of said district.

#### III.

That the delinquent tax roll hereto attached, marked Exhibit "A," and hereby included by this

reference as a part of this petition, includes all real properties within the boundary of the Anchorage Independent School District upon which real property taxes are delinquent for the fiscal years commencing July 1st each year, namely 1951-1952, 1952-1953, 1953-1954, 1954-1955.

#### IV.

That said delinquent tax roll as heretofore referred to as Exhibit "A" was duly and regularly made up by the proper officers of the School Board of the Anchorage Independent School District, and by said treasurer certified in the manner required by law, and such certification was attested to in the manner required by law by K. M. Lesh, treasurer of said district; that pursuant to the resolutions of said Board, said roll was published in the Anchorage Daily News, a newspaper of general circulation, published in Anchorage, Alaska; that with said roll also published setting forth that such delinquent tax roll was open for public inspection in the district tax collector's office in the office of the Tax Assessor and Collector, Administration Building, West Hillcrest Drive, Anchorage, Alaska; that said roll, together with added official notice was published in such paper on April 18, April 25, May 2, May 9, and May 16, 1955; that proof of such publication is hereto attached and in this petition incorporated as petitioners' Exhibit "B."

#### V.

That there is annexed to this petition, as petitioners' Exhibit "A," the original delinquent tax

roll as certified on the 12th day of April, 1955, together with a certified copy of said roll; that said roll was prepared by the proper officers of said district according to law and includes delinquent taxes upon real property within the boundaries of the Anchorage Independent School District for the assessment years 1951-1952, 1952-1953, 1953-1954, 1954-1955; that said roll is known as the Delinquent Tax Roll of the Anchorage Independent School District for the year 1955; that said roll according to law, describes by appropriate legal description, the real property assessed, the period for which delinquent taxes are claimed, the amount of tax due, the penalty and interest assessed upon such delinquent taxes, and the name of the person to whom such property is assessed, if the name of the owner is known, and where the name of the owner is unknown, such fact is so stated.

## VI.

That said notice as referred to in paragraph IV hereof notifies all persons of delinquent property taxes due the Anchorage Independent School District; that said district by its Treasurer, would on the 24th day of June, 1955, at the hour of 10:00 a.m., or as soon thereafter as the same could be heard, present said delinquent tax roll in accordance with the provisions of Territorial law.

## VII.

That the delinquent taxes upon real property described in the accompanying tax roll have not been

paid, except those originally shown thereon and which, as appears thereby, have been stricken from said roll, are delinquent and now due, owing and unpaid to the Anchorage Independent School District together with penalties, interest and costs, as in said roll specified.

### VIII.

That this petition is presented to this Honorable Court under the provisions of Article 7, Sections 16-1-121, et seq., Alaska Compiled Laws Annotated 1949, Volume I.

Wherefore, the Anchorage Independent School District respectfully prays that the Court:

(1) Shall hear, pass upon and determine the legality of said delinquent tax roll and hear any objections thereto that may be presented against the validity of any tax penalty or interest assessed against any property listed in said roll.

(2) After hearing upon said roll, that the Court enter an order directing that the several parcels of real property listed in said delinquent tax roll be sold by the Anchorage Independent School District to satisfy and discharge the district's lien for taxes, penalties and interest thereon, and the costs of the adjustment of said roll, including the costs of this proceeding.

(3) That the court allow the district a reasonable attorney's fee to pay for the services of the

attorney representing said district in this proceeding.

(4) That the court grant to the petitioner herein such other and further relief as to the court may seem just and equitable in the premises.

/s/ E. H. ARNELL,  
Attorney for Petitioner.

/s/ EDWARD V. DAVIS,  
President.

Attest:

/s/ K. M. LESH,  
Treasurer.

Duly verified.

## EXHIBIT "A"

Delinquent Tax Roll of the Anchorage Independent School  
District for the Year 1955  
Chugach Electric

Page	Line	Description	Year	Tax	Penalty	Interest	Costs	Total Due
6	10	E 26.5' Lot 2 and E 26.5' L-11 Davis Subdivision .....	1955	6.69	1.00	.34	9.25	17.28
6	20	Lot 1 Delaney Sub. ....	1955	43.05	6.46	2.15	9.25	60.91
6	21	Lots 1, 6 and 7 Delaney Sub. ....	1954	37.76	5.66	4.15	9.25	56.82
7	16	S1/2 6A Block, East Addition.....	1955	2093.12	313.97	104.66	9.25	2521.00
7	17	S1/2 Block 6A, East Addition.....	1954	2228.11	334.22	245.09	9.25	2816.67
8	13	Lot 23 Eide Subdivision.....	1955	5.00	.75	.25	9.25	15.25
8	14	Lot 23 Eide Subdivision.....	1954	1.00	.60	.44	9.25	14.29
8	15	Lot 24 Eide Subdivision.....	1955	5.50	.83	.28	9.25	15.86
8	16	Lot 24 Eide Subdivision.....	1954	5.00	.75	.55	9.25	15.55
28	10	Lot 5 Spenard Industrial Development .....	1954	80.57	12.09	8.86	9.25	110.77



28	11	Lot 6 Spenard Industrial Development .....	1954	6.00	.90	.66	9.25	16.81
34	2	Beginning at the SW Corner of Lot 4 Block 1, Van Subdivision due South 126' to pt. of beginning; thence due S 126'; thence due E 140'; thence due N 126'; thence due W 140' to pt. of beginning.....						
34	3	Beginning at the SW Corner of Lot 4 Block 1, Vans Sub. due S 126' to point of beginning; thence due S 126'; thence due E 140'; thence due N 126'; thence due W 140'; to pt. of beginning .....	1955	4.00	.60	.20	9.25	14.05
47	1	Pareel 209' x 209' in NW ¼ Sec. 22 T13N R3W (1 acre) .....	1954	12.52	1.88	1.38	9.25	25.03
30	19	W 47' Lots 3 and 4 Block 18D Third Addition .....	1955	249.00	37.35	12.45	9.25	308.05

[Endorsed]: Filed June 24, 1955.

[Title of District Court and Cause.]

ORDER GRANTING APPLICATION  
AND AUTHORIZING SALE

The above-entitled matter, pursuant to the laws of the Territory of Alaska and the resolutions of the Board of the Anchorage Independent School District, having, on the 24th day of June, 1955, been presented to this Court at the hour of 10:00 a.m., and it appear from the records and files in this proceeding that no objections have been filed of record opposing the granting of this petition, except the objections of the Chugach Electric Association, Inc., and the Court, on said date, having heard the testimony of witnesses, and

— It appearing from the petition herein that the Anchorage Independent School District is a municipal corporation, organized and existing by virtue of the laws of the United States of America and the Territory of Alaska, and is situated within the Third Judicial Division of said Territory and within the jurisdiction of this Court; and

It further appearing that said roll as presented includes delinquent real property taxes for the fiscal years 1951-1952, 1952-1953, 1953-1954, 1954-1955; and

It further appearing that said delinquent roll, filed in this proceeding, was made up in the manner required by law and the resolutions of said District; and

It further appearing that the Treasurer of said Board did endorse upon said roll a certificate, stat-



ing that the same was a true and correct roll of all delinquent taxes in the Anchorage Independent School District for the years designated; and

It further appearing that the original of said roll was filed in the office of the Tax Collector for the Anchorage Independent School District and at all times herein pertinent remained open to inspection by the public; and

It further appearing that the Tax Collector of the Anchorage Independent School District, under the direction of the School Board thereof, caused to be published in the Anchorage Daily News, a newspaper of general circulation, published in Anchorage, Alaska, once each week for a period of four successive weeks a notice, under the hand of the Treasurer of said District, said publication dates being April 18, 1955; April 25, 1955; May 2, 1955; May 9, 1955, and May 16, 1955; and

It further appearing that the notice and roll so published set forth the delinquent taxes, penalties and interest remaining unpaid upon real properties therein listed for the years designated; and

It further appearing that said notice so published did designate the 24th day of June, 1955, as the day and the time of 10:00 a.m. of said day as the hour when said roll, as prepared and published, was to be presented to this Court; and

It further appearing that the last day of publication was more than thirty days prior to the date specified for the filing of said roll in this Court; and

It further appearing that said notice so published did describe each tract of land upon which delinquent taxes remained unpaid, did state the amount of taxes, penalties and interest due thereon, and the name of the person to whom assessed, where such name was known and where the name of the owner was unknown, such fact is so stated; and

It further appearing that no person claiming to be the owner of any property listed in said roll has appeared in this proceeding to object to the legality of said roll or to the validity of any tax or assessment upon any property described in said roll, except Chugach Electric Association, Inc.; and

It further appearing to the Court that the taxes, penalties, interest and costs in said roll set forth have been legally assessed and are valid and unpaid; and

The Court being fully advised in the premises;

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That all proceedings in the above-entitled matter are and they are hereby declared to be valid, provided, however, that hearing upon the objections of the Chugach Electric Association, Inc., be continued subject to further order of this Court.

2. That there be sold, according to law to satisfy and discharge the tax liens held by the Anchorage Independent School District and in payment of

penalties, interest, attorney's fees and all costs the property described in Exhibit A attached hereto and made a part hereof, except any properties listed on said exhibit in the name of Chugach Electric Association, Inc.

3. That a certified copy of this order shall be attached to this delinquent tax roll proceedings file and filed herein and become a part of the record hereof.

4. That the Anchorage Independent School District be, and it hereby is, awarded publication costs in the amount of \$6,290.00 for the first publication of said roll.

5. That the Anchorage Independent School District be, and it hereby is, awarded the sum of \$500.00 as and for attorney's fees incurred by said district in this proceeding.

6. That the Anchorage Independent School District be, and it hereby is, allowed to tax against the properties herein described increased costs to be incurred as required by law.

7. That all costs, attorney's fees and increased costs be, according to law, prorated among the properties herein ordered to be sold.

Done in open Court this 24th day of June, 1955.

/s/ JAMES L. McCARRY, JR.,  
District Judge.

[Endorsed]: Filed and entered June 24, 1955.

[Title of District Court and Cause.]

### MOTION TO DISMISS

Chugach Electric Association, Inc., an Alaskan corporation, and a party in interest herein, by Edgar Paul Boyko, its attorney, moves to dismiss the so-called Supplemental Petition for a Judgment and Order of Sale filed herein by the City of Anchorage, on the following grounds:

1. That this Honorable Court lacks jurisdiction to hear the same because the applicable statute under which this proceeding has been brought has not been complied with by the City of Anchorage in several respects, as more particularly set forth below.

2. That Article 7, Chapter 1, of Title 16 ACLA, 1949, does not authorize the filing of a supplemental delinquent tax roll and that the delinquent tax roll of the City of Anchorage for the year 1954 has been filed heretofore and was certified to be complete and a final Judgment and Order of Sale was issued thereon on October 29, 1954, in case No. A-10,396; and the said case has been closed.

3. That the records of this case show that publication of the Notice of Tax Sale required by statute in this proceeding was not completed until on or after December 28, 1954; that said notice, as published, states that the delinquent tax roll, or "supplemental" delinquent tax roll which is the subject matter of this proceeding will be presented to the

District Court for Judgment and Order of Sale on January 7, 1955; and said roll was in fact presented to this Honorable Court on said date; that the applicable statute and particularly Section 16-1-122, ACLA, 1949, requires that said roll shall be presented to the District Court for a Judgment and Order of Sale "on a certain day not less than thirty days after the completion of the publication"; that not more than ten days have elapsed between the date of completion of publication and the presentation of the roll to the Court on the date set forth in said notice; that for the reasons just stated, this Court lacks jurisdiction to proceed further in this case, at least until proper publication has been had and a proper date has been set for the presentation of the said roll.

4. That this motion is filed concurrently with, and supplementary to the written Objection to Tax and proposed Order of Sale filed herein on this day, for the purpose of enabling this Honorable Court to dispose of the issue of jurisdiction, as distinguished from the merits and points of substantive law raised in said objection.

/s/ EDGAR PAUL BOYKO,  
Attorney for Chugach Electric Association, Inc.

Certificate of service attached.

[Endorsed]: Filed January 8, 1955.



In the District Court for the District of Alaska,  
Third Division, Anchorage, Alaska

No. A-10,396

In the Matter of:

The Delinquent Tax Roll of the City of Anchorage  
for the Year 1954

No. A-11,097

In the Matter of:

The Delinquent Tax Roll of the Anchorage Independent School District for the Year 1954, etc.

MOTION TO CONSOLIDATE  
AND TO DISMISS

Chugach Electric Association, Inc., a co-operative corporation of the Territory of Alaska, by Edgar Paul Boyko, its attorney, respectfully represents as follows:

1. That it is a party in interest to each of the above-entitled causes now pending before this Honorable Court and that both of said causes involve a common question of law, which is the subject matter of the Motion to Dismiss hereto subjoined.

2. That the cause of efficiency, economy and good procedure would be served, and the time of the Court and of the parties litigant would be conserved, if the above-entitled causes were to be consolidated, at least for the purpose of the hearing on the respective Motions to Dismiss.

3. That the above-entitled causes, and each of them, should be dismissed because the petition upon which each is based fails to state a claim against Chugach Electric Association, Inc., upon which relief can be granted, and, specifically, because the said Chugach Electric Association, Inc., is expressly exempt from taxation by either the City of Anchorage or the Anchorage Independent School District, by virtue of the provisions of Section 6(b) of Chapter 10, Session Laws of Alaska, 1949, as amended, supplemented and re-enacted by Section 3 of Chapter 33, Session Laws of Alaska, 1953, and for other reasons to be stated at the hearing hereof.

Wherefore, Chugach Electric Association, Inc., respectfully moves this Honorable Court as follows:

(a) To consolidate the above-entitled causes for the purpose of hearing of the subjoined Motions to Dismiss, and for such other purpose or purposes as to this Honorable Court may appear proper and just.

(b) To dismiss the above-entitled causes, and each of them, on the grounds hereinabove stated.

/s/ EDGAR PAUL BOYKO,

Attorney for Chugach Electric Association, Inc.

## NOTICE

To: John L. Rader, Esq., City Hall, Anchorage, Alaska, and E. L. Arnell, Esq., Turnagain Arms Apartments, Anchorage, Alaska, Attorneys for the above-named Petitioners.

Please Take Notice that the undersigned will bring the within Motion for consolidation and to dismiss on to hearing before the Honorable J. L. McCarrey, Jr., District Judge, in the District Courtroom, Federal Building, Anchorage, Alaska, on Tuesday, August 2, 1955, at 3:00 o'clock in the afternoon of said day, or as soon thereafter as counsel may be heard.

Said motion will be made and heard upon this Notice and upon the pleadings, papers, records and files in the above-entitled causes.

/s/ EDGAR PAUL BOYKO,  
Attorney for Chugach Electric Association, Inc.

Certificate of service attached.

Received July 5, 1955.

[Endorsed]: Filed July 5, 1955.



[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

M.O. CONSOLIDATION FOR PURPOSES OF  
ARGUMENT ON MOTION TO DISMISS  
ONLY

Now at this time, this cause coming on to be heard before the Honorable J. L. McCarrey Jr., District Judge, the following proceedings were had, to wit:

Now at this time upon motion of Edgar P. Boyko, counsel for Chugach Electric Co.; John L. Rader, for and in behalf of the City of Anchorage, and Edward L. Arnell for and in behalf of the Anchorage Independent School District, not objecting,

It Is Ordered that causes No. A-10,396, entitled In the Matter of the Delinquent Tax Roll of the City of Anchorage for the Year 1954, and No. A-11,097, entitled In the Matter of the Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955, said Roll being known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955, be and they are hereby consolidated for purposes of arguments on motion to dismiss as to Chugach Electric Association only.

Entered September 1, 1955.

*Anchorage Independent School District*

In the District Court for the District  
of Alaska, Third Division

No. A-10,396

In the Matter of

The Delinquent Tax Roll of the City of Anchorage for the Year 1954.

No. A-11,097

In the Matter of

The Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of Said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955; Said Roll Being Known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955.

(Consolidated)

### OPINION

John Rader for the Petitioner City of Anchorage;  
E. L. Arnell for the Petitioner Anchorage Independent School District; Edgar P. Boyko for Chugach Electric Association, Inc., taxpayer.

These two cases have been consolidated because of a common question of law for the sole purpose of determining a motion to dismiss.

The City of Anchorage, a municipal corporation, in cause No. A-10,396, petitioned the court to foreclose its tax lien for the year 1954, and the Anchorage Independent School District, in cause No. A-11,097, petitioned the court to foreclose its tax liens for the years 1951-1952, 1952-1953, 1953-1954, 1954-1955.

The Chugach Electric Association, Inc., is an Alaskan non-profit co-operative association, organized for the purpose of participating as a co-operative under the Rural Electrification Administration Act of 1936, as amended. (7 USCA 901, et seq.)

While the Chugach Electric Association, Inc., supplies electricity and electrical service to rural areas on monies borrowed from the Rural Electrification Administration, the generating plant itself and accompanying facilities are located inside the corporate limits of the City of Anchorage, and were constructed upon leased ground, within the yards of the Alaska Railroad, in a joint participation undertaking with the Alaska Railroad. The latter is a government-owned railroad that operates under the direction and by virtue of congressional authority granted to the Department of the Interior. (48 USCA 301, et seq.)

A portion of the electricity used by the co-operative is generated within the yards of the Alaska Railroad (*supra*) and is transmitted over lines into the rural areas served by the co-operative. The gen-

erating plant of the co-operative, and a portion of the co-operative transmission lines are likewise located within the boundaries of the Anchorage School District.

In the motion to dismiss, the movant taxpayer, Chugach Electric Association, Inc., originally based its motion upon several procedural defects, and other grounds hereinafter designated. However, these alleged procedural defects have now been waived upon stipulation by the co-operative.

The remaining grounds upon which the motion to dismiss is based are as follows: (1) The co-operative is a governmental instrumentality and, therefore, is not taxable; (2) Its property is located wholly within the Alaska Railroad Reserve with title being in the Government and, therefore, is not taxable; (3) The co-operative has been granted specific immunity from taxation by the Territorial Legislature.

Only point number 3 will be considered, since a favorable determination for the movant on any one of the three points would be controlling.

In 1949, the Territorial Legislature passed an act entitled "Alaska Property Tax Act" and provided, among others, the following exemptions: "The property of the United States, of the Territory, and of any municipal corporation, independent school district, incorporated school district, public utility district and association operating utilities under arrangements with the Rural Electrification Adminis-

tration, shall be exempt hereunder." (Emphasis supplied.) (Chap. 10, Session Laws of Alaska, 1949, Sec. 6(b).)

In 1953, the legislature repealed the "Alaska Property Tax Act." (Chap. 22, Session Laws of Alaska, 1953.)

The same legislature passed a tax act "authorizing and empowering cities, municipalities, school districts, public utility districts and other taxing units to classify property for the purpose of taxation and authorizing the granting of exemptions to certain classes of property; making exemptions granted and classifications made under Chapter 10, Session Laws of Alaska, 1949, binding upon such taxing units and declaring an emergency." (Emphasis supplied.) (See introductory clause, Chapter 33, Session Laws of Alaska, 1953.)

Section 3 of the same act passed by the 1953 legislature concerning taxation provides as follows: "All exemptions granted in whole or in part, and all classifications heretofore made under the provisions of Section 6, Chap. 10, Session Laws of Alaska, 1949, shall remain in full force and effect upon the terms and for the periods granted, and shall be binding upon the Territory, and all cities, municipalities, school districts, public utility districts and other taxing units in which the property which is the subject of classification or exemption is situated, and the exemptions granted or classifications so made shall apply to all taxes levied and as-



essed by the city, municipality, school district, public utility district or other taxing units where the property is situated, as fully as though they had been granted or made under the provisions of this act. The purpose and intent of this section is to carry into practical effect all classifications made and exemptions granted under the provisions of Chap. 10, Session Laws of Alaska, 1949." (Emphasis supplied.)

"All acts and parts of acts in conflict herewith are hereby repealed to the extent of the conflict." (See Sections 3 and 5, Chap. 33, Session Laws of Alaska, 1953.)

The City of Anchorage opposes point number 3 principally on the basis of:

- a. Statutory construction;
- b. The exemption claimed is in violation of the Territorial Organic Act;
- c. The exemption purportedly granted to an association "\* \* \* under arrangement with the Rural Electrification Administration \* \* \*" is invalid.

The Anchorage Independent School District opposes the same point upon the bases of:

- a. Statutory construction;
- b. Legislative intent;
- c. The claimed exemptions would not apply to a tax not asserted.

Prior to the Alaska Property Tax Act, the Independent School District of the Territory of Alaska levied and collected taxes under legislative

authorization set forth in 37-3-23 ACLA, 1949, and 37-3-53, which, among other things, denominated exemptions of the school tax, while the municipalities levied and collected taxes and gave exemptions through the legislative authorization of 16-1-35(g), as amended, and 16-4-1 ACLA, 1949.

The Alaska Property Tax Act of 1949 (*supra*) purports to be a general codification of the tax law in the Territory of Alaska and clearly enumerates the exemptions (*supra*). I do not believe that the word "codification" can be considered as being used in a "strained" sense, for, in Section 3, the law states: "\* \* \* there shall be assessed, collected and paid, a tax upon all real property and improvements and personal property in the Territory \* \* \*" (Emphasis supplied.) Then in Section 4 of the Act is found this language: "The tax levied under the provisions of Section 3 upon the property within the limits of an incorporated city or town, independent school district or incorporated school district in the Territory shall be assessed, collected and enforced in the manner prescribed by the property tax law of the municipality or district \* \* \*" and "All of the tax levied under this Act which is so collected shall be remitted to such municipalities or school districts as follows: \* \* \*" (Emphasis supplied.)

Counsel for the petitioners have urged upon the court the theory that the legislature did not intend, by Chapter 10 of the 1949 Session Laws, to limit the general taxing power of the municipalities,

school districts, etc. Their arguments fall under their own weight since it cannot be said that the legislature intended that the 1% authorized by this act would be in addition to that authorized to the municipalities and independent school districts enumerated above. Thus, the only reasonable interpretation which one can give to the intent of the legislature in passing Chapter 10 of the 1949 Session Laws is that it intended to codify, so to speak, all of the basic taxing laws into one general act, which they named the "Alaska Property Tax Act," wherein they granted certain exemptions. To give any other interpretation would result in the property of an association " \* \* \* operating utilities under arrangement with the Rural Electrification Administration \* \* \*" being taxed by the Territory of Alaska outside of any municipality, independent school district, incorporated school district or public utility district; yet, at the same time, such an "association" could not be taxed within the boundaries of the foregoing taxing entities.

It is true that the statutes under which taxes are levied and collected by the municipalities and the school districts here in the Territory of Alaska are not referred to specifically by a cross reference. However, when all of the acts are viewed as a whole and construed together, the legislature's intent is clear.

I am of the opinion that Chap. 10 of the Session Laws of Alaska, 1949, is legislation passed under the board, general taxing powers of the sovereignty



of the Territory of Alaska, and while I find that the execption given to asocations operating utilities under an arrangement with the R. E. A. is somewhat broad, loose, and a general term not readily or easily defined, I find that this exemption does apply to the movant, Chugach Electric Association, Inc.

Counsel for the petitioner, City of Anchorage, urges that since the Rural Electrification Administration is not limited under the federal law creating it to “\* \* \* the lending of funds to co-operatives,” such an exemption as provided in the laws of the Territory of Alaska could not “\* \* \* be applied with fairness because of the indefiniteness of the term.” (See City petitioner’s brief under Section 4 at page 8.) I cannot accept this as a logical argument for the reason that the tax exemption being considered in this case is limited to those as-sociations which operate “utilities” under an “arrangement” with the R. E. A.; hence, the possible vested authority of R. E. A. to perform another function other than to supply utilities is immaterial in the final analysis and determination of the case before the court.

I find such a classification of the property exempt under the law here in question to be a reasonable one, and should the municipalities, independent school districts, etc., of the Territory of Alaska be aggrieved by such a law covering this exemption, their recourse is with the legislature.

The petitioners make much of the case of the Inter-City Rural Electric Co-operative Corporation vs. Reeves, Commissioner of Revenue, et al., Court of Appeals, Kentucky, 1943, 171 SW 2d, 978, in which case the court held that an exemption under the Kentucky Constitution which required “\* \* \* and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws,” was held to be unconstitutional. I am not greatly moved by this argument for the reason that the Alaska Organic Act requires only that “\* \* \* all taxes shall be uniform upon the same class of subjects” (supra). A comparison of the two acts distinguishes the applicability of the petitioners’ argument, since the constitutional requirements are different. I am of the opinion that the requirement of the Kentucky Constitution in determining the constitutionality of a tax law is that the tax must be assessed uniformly on the same class of property, and, therefore, the only way the property could be exempt would be if the co-operative were considered to own public property, which it is obvious that it did not and, thus, they were liable for taxes. In the Organic Act requirement of the Territory of Alaska is the provision that all persons of a certain class must be treated uniformly. In the case before the court, in referring to “the same class of subjects” (supra), the language of the exemption statute reads: “\* \* \* arrangement with the Rural Electrification Administration \* \* \*” (supra). The choice of this language

is unfortunate; however, it would appear to be a reasonable classification; thus, all co-operatives having "arrangements" with the Rural Electrification Administration must be treated alike.

The petitioners argue in their briefs that it is " \* \* \* a fundamental rule of statutory construction that any enactment must be construed in its entirety, and that any purpose or intent of the legislature must be extracted from all of the provisions, rather than from a single, isolated section." (Page 5 of School District brief.) This I accept as a legal, cardinal principle of statutory construction. (U. S. vs. Alpers (1950), 338 US 680; Great Northern Rail. Co. vs. U. S. (1942), 315 US 262.)

Points of law which I have considered in the determination of this problem are: There is a presumption against the surrender of taxing power (51 Am Jur 526 at p. 529); therefore, the party claiming the exemption has the burden of proof (51 Am Jur 527 at p. 530), and the existence of a well-founded doubt of an exemption is fatal. (Bank of Commerce vs. Tennessee, 161 US 134.) It is also a general principle of law that a statute concerning a municipality (City of Miami vs. Kayfetz, 30 So. 2d 521; Fisher vs. City of Pittsburgh, 112 Atl. 2d 814) and a school district (Madison County vs. School District #2, 27 NW 2d 172) must be strictly construed, since they are both governmental subdivisions.

In conclusion, I find no well-founded doubt in this case. The legislature has granted an exemption

to co-operatives operating utilities under "arrangement" with the R. E. A. As previously discussed, this exemption is not expressed in as clear language as could be desired. However, I find that the legislature did intend such an exemption and it is obvious that none but co-operatives such as the Chugach Electric Association, Inc., and other co-operatives in a like position as Chugach Electric Association, Inc., could qualify.

The difficulty of the interpretation of the tax problem and the applicability of the exemption herein presented to the taxpayer and the courts is a classic example of the ever-increasing and growing need for the legislature to pass legislation creating better taxation laws.

As heretofore orally announced in open court, the motion to dismiss as to the Chugach Electric Association, Inc., is hereby granted.

Dated at Anchorage, Alaska, this 8th day of May, 1956.

/s/ J. L. McCARREY, JR.,  
U. S. District Judge.

Received May 9, 1956.

[Endorsed]: Filed May 9, 1956.

In the District Court for the District of Alaska,  
Third Division

No. A-10,396

In the Matter of

The Delinquent Tax Roll of the City of Anchorage  
for the year 1954.

No. A-11,097

In the Matter of

The Application of the Anchorage Independent  
School District for an Order Directing Sale of  
All Properties Listed in the Delinquent Tax  
Roll of Said District for the Fiscal Years 1951-  
1952, 1952-1953, 1953-1954, 1954-1955; Said Roll  
Being Known as the Delinquent Tax Roll of the  
Anchorage Independent School District for the  
Year 1955.

### JUDGMENT OF DISMISSAL

This matter having come before the Court upon  
the motion to consolidate and dismiss filed by the  
Chugach Electric Association, Inc., in the above-  
entitled proceeding, and this Court having heard  
oral argument by counsel for the respective parties,  
upon each and all of the grounds stated in said  
motion to dismiss, and this Court also having con-  
sidered the written briefs filed by the respective par-  
ties through their counsel, in compliance with orders



of this Court, and this Court being fully advised in the premises, does hereby find that said motion should be granted and said petitions and each of them dismissed, upon the grounds and for the reasons set forth in an Opinion filed in the above-entitled proceeding on May 9, 1956;

Wherefore, It Is Ordered, Adjudged and Decreed:

1. That the Petition of the City of Anchorage, entitled, "In the Matter of the Delinquent Tax Roll of the City of Anchorage for the Year 1954," being Cause No. A-10,396, be, and the same hereby is, dismissed, with prejudice, as to Chugach Electric Association, Inc.

2. That the Petition of the Anchorage Independent School District, entitled, "In the Matter of the Application of the Anchorage Independent School District for an Order Directing Sale of All Properties Listed in the Delinquent Tax Roll of Said District for the Fiscal Years 1951-1952, 1952-1953, 1953-1954, 1954-1955; Said Roll Being Known as the Delinquent Tax Roll of the Anchorage Independent School District for the Year 1955," being Cause No. A-11,097, be, and the same hereby is, dismissed, with prejudice, as to Chugach Electric Association, Inc.

3. That Chugach Electric Association, Inc., have and recover of the said petitioners its costs of these proceedings including an attorney's fee of Two Hundred Fifty Dollars (\$250.00).

Made and Ordered Entered at Anchorage, Alaska,  
this 12th day of June, 1956, at the hour of 10:14  
a.m.

/s/ J. L. McCARREY JR.,  
Judge of the District Court.

Approved as to form:

/s/ LYNN W. KIRKLAND,  
Attorney for  
City of Anchorage.

/s/ E. L. ARNELL,  
Attorney for Anchorage Inde-  
pendent School District.

[Endorsed]: Filed and entered June 12, 1956.

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[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

### NOTICE OF APPEAL

Notice is hereby given that the Anchorage Independent School District, petitioner above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the District Court for the Third Division, District of Alaska, dismissing, with prejudice, as prayed for by Chugach Electric Association, Inc., the petition of the Anchorage Independent School District for an order directing sale of real property listed in the delinquent tax roll for the Anchorage Independent

School District for the year 1954, which order of dismissal was signed and entered in the above-numbered cases on June 12, 1956.

/s/ E. L. ARNELL,  
Attorney for Petitioner, Anchorage Independent  
School District.

Service of copy acknowledged.

[Endorsed]: Filed July 9, 1956.

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[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097 (Consolidated)

### APPELLANT'S STATEMENT OF POINTS

The points upon which the Appellant will rely, upon appeal, are:

1. The Court erred in ruling that the Alaska Property Tax of one per cent (1%) was not, in fact, and was not intended by the Legislature to be, in addition to the taxes, Appellant, by law, is otherwise authorized to collect.
2. The Court erred in ruling that the exemption provisions of the Alaska Property Tax Act, Chapter 10, Section 6(b), Session Laws of Alaska, 1949, as preserved by the provisions of Chapter 22, Session Laws of Alaska, 1953, are applicable to the taxes levied by Appellant.



3. The Court erred in granting to Appellee judgment of dismissal, for the reason that said judgment is not supported by evidence establishing Appellee's compliance with the provisions of Chapter 33, Session Laws of Alaska, 1953.

4. The Court erred in ruling that Appellee (Chugach Electric Association, Inc.) is exempt from the payment of taxes levied by the Appellant.

5. The Judgment of Dismissal entered by the Court in the above-entitled proceedings is contrary to law.

Dated at Anchorage, Alaska, this 3rd day of August, 1956.

/s/ E. L. ARNELL,  
Attorney for Appellant, Anchorage Independent  
School District.

Service of copy acknowledged.

[Endorsed]: Filed August 3, 1956.

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[Title of District Court and Cause.]

Nos. A-10,396 and A-11,097

CLERK'S CERTIFICATE—  
ORIGINAL RECORD

I, Wm. A. Hilton, Clerk of the above-entitled Court, do hereby certify that pursuant to Rule 10(1) of the United States Court of Appeals, Ninth

Circuit, and of Rules 75(g)(o) of the Federal Rules of Civil Procedure, and of the designations of counsel in Causes No. A-10,396 and A-11,097, consolidated, I am transmitting herewith in separate volumes the Original Papers in my office dealing with the above-entitled actions or proceedings.

The papers herewith transmitted constitute the record on appeal in said actions from the judgment filed and entered in the above-entitled actions by the above-entitled Court on June 12, 1956, to the United States Court of Appeals, Ninth Circuit, San Francisco, California.

Dated at Anchorage, Alaska, this 9th day of August, 1956.

/s/ WM. A. HILTON,  
Clerk.

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[Endorsed]: No. 15232. United States Court of Appeals for the Ninth Circuit. Anchorage Independent School District, Appellant, vs. Chugach Electric Association, Inc., Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Third Division.

Filed: August 11, 1956.

Docketed: August 16, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals,  
Ninth Circuit

No. 15231

In the Matter of

The Delinquent Tax Roll of the City of Anchorage  
for the Year 1954.

No. 15232

In the Matter of

The Delinquent Tax Roll of the Anchorage Inde-  
pendent School District for the Year 1955.

### STIPULATION

Whereas, each of the above-entitled proceedings involves substantially the same issues of law and are based upon the same opinion rendered by Judge J. L. McCarrey, Jr., Judge of the District Court for the District of Alaska, Third Division, Territory of Alaska, and

Whereas, counsel for the respective parties deem the consolidation of said appeals to be advantageous to the various parties;

Now, Therefore, It Is Stipulated, by the undersigned that the above-entitled proceedings, No. 15231 and No. 15232, now pending before the above-entitled court, may, by order of said court, be consolidated for all purposes, by the entry of any Order of Consolidation which the court deems appropriate.

Dated at Anchorage, Alaska this 5th day of Sept., 1956.

/s/ E. L. ARNELL,  
Attorney for Appellant, Anchorage Independent  
School District.

/s/ JAMES M. FITZGERALD,  
Attorney for Appellant, City of Anchorage, An-  
chorage, Alaska.

/s/ EDGAR PAUL BOYKO,  
Attorney for Appellee.

So Ordered.

/s/ WILLIAM DENMAN,  
Chief Judge;

/s/ ALBERT LEE STEPHENS,

/s/ H. T. BONE,  
United States Circuit Judges.

[Endorsed]: Filed September 7, 1956.